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The Internet Content Rating Association: The Way to Patrol the Internet Highway?

By CARRIE LAM*

I. The Wonders of the Internet and Its Perceived Problems

Although the Internet has been dubbed the “information highway,” travelers on this highway should be wary of “rest stops” that have parents and the government worried. Of the millions of people who use the Internet daily, many find it to be a convenient medium through which to send e-mail or to search for information on everything from “the music of Wagner to Balkan politics to AIDS prevention to the Chicago Bulls.”¹ This is exactly the reason why the Internet has been termed the “equalizer” of all people. It makes information easily accessible and allows people all over the world, from all different backgrounds, to research and telecommute from the comforts of their own homes instead of battling the noisy traffic in the real world. However, such unlimited access is a double-edged sword. Problematic information that is accessible to anyone with a computer and a modem, such as sexually explicit material, can also be found in the mix of information posted on the Internet.

Many, including Justice Stevens in *Reno v. ACLU*, have thought that accidental entry into such problematic sites is a rare occurrence.² However, it may not be all that unusual given the number of sexually explicit sites that claim to display material suitable for children by inserting words like “Sleeping Beauty,” “Little Women,” or even “toys” in their website content description (known as metatags).³ Such searches will result in references to sites for children’s movies

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1. *Reno v. ACLU*, 521 U.S. 844, 851 (1997).

2. *Id.* at 854.

3. Heather L. Miller, *Strike Two: An Analysis of the Child Online Protection Act’s Constitutional Failures*, 52 FED. COMM. L.J. 155, 161 (1999).

along with sexually explicit sites.⁴ In fact, a search done on the Internet in August 1999 for "Little Women" using the Excite search engine returned names of sites that sell adult videos or provide adult content.⁵ The same search was done on other search engines and returned similar results.⁶ Although one will usually need to actively choose these sites to be able to visit them, inadvertent links and pop-up windows to sexually explicit sites can happen. Some website owners or publishers and even computer hackers can redirect an Internet visitor to sites that have nothing to do with what is being searched. For instance, an unsuspecting student doing research on the White House by visiting whitehouse.com, or NASA by checking nasa.com, or inadvertently misspelling the domain name of yahoo.com by entering yahooh.com, can be involuntarily led to sites filled with adult material.⁷ Thus, it is possible and perhaps even becoming easier to inadvertently stumble upon something that is unsuitable for children.

These are the kinds of "rest stops" along the information highway that the government, parents, guardians, and now big Internet industry companies want to protect children from seeing. A conflict then arises between giving children access to the largest research tool in the world while protecting them from obscene and questionable adult material on the one hand, and protecting people's constitutional free speech rights on the other.

The purpose of this Note is to look at this conflict between protecting children online and protecting free speech more closely in terms of the many solutions that have been posed. A comparison will be made between the United States' attempts at solutions through the Communications Decency Act and the Child Online Protection Act, and the new international and self-regulatory approach of the Internet Content Rating Association. This Note will examine these solutions and the problems that inevitably arise regarding issues of free speech. Questions that will be addressed include whether an international self-regulatory solution is really the answer or if it is merely an opportunity for large, established Internet companies to promote themselves to potential consumers; what the implications of

4. *Id.* at 161-62.

5. *Id.* at 162.

6. *Id.*

7. Jon Swartz, *Government Parasites: "Stealth" Web Pages Feed Off Addresses*, S.F. CHRON., June 3, 1998, at D1.

such a self-regulatory international solution are; and whether the international rating association will fare better than in the United States.

II. U.S. Attempts at a Solution

A. *The Communications Decency Act of 1996*

The Communications Decency Act of 1996 (CDA) was first introduced by Senator Jim Exon (D-Nebraska) on February 1, 1995.⁸ By amending the Communications Act of 1934, the legislation aimed to address the growing concern about the "misuse" of the Internet.⁹ Senator Exon sought the help of his fellow congresspersons by urging that "the information superhighway should not become a red light district . . . [o]nce passed, our children and families will be better protected from those who would electronically cruise the digital world to engage children in inappropriate communications and introductions."¹⁰

However, there was opposition to the CDA by those familiar with the Internet and Senator Patrick Leahy (D-Vermont) led the fight against the amendment in Congress. Senator Leahy proposed a competing amendment, with the Department of Justice and the Department of Commerce first to study how users could self-select content before enacting vague and overly restrictive legislation such as the CDA.¹¹ This attempt to block the CDA eventually failed.¹²

Newt Gingrich, then Speaker of the House, played a major role by maintaining his position against the CDA.¹³ In response to the CDA, the House of Representatives passed its own telecommunications bill along with the Cox-Wyden Amendment (Internet Freedom and Online Family Empowerment) by a vote of 420 to 4.¹⁴ According to its proponents, this amendment prohibited the Federal Communications Commission (FCC) from regulating the

8. 141 CONG. REC. S1953 (daily ed. Feb. 1, 1995).

9. *Id.*

10. *Id.*

11. S. 714, 104th Cong. (1995), reprinted in 141 CONG. REC. S8389-90 (daily ed. June 14, 1995).

12. 141 CONG. REC. S8346-47 (daily ed. June 14, 1995).

13. Robert Cannon, *The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway*, 49 FED. COMM. L.J. 51, 66-68 (1996).

14. 141 CONG. REC. H8478-79 (daily ed. Aug. 4, 1995).

Internet and relieved access providers from liability regarding the material their customers posted.¹⁵ In fact, the Cox-Wyden Amendment was consistent with the CDA and the only thing it added was protection for online service providers if they showed a good faith effort in restricting offensive material.¹⁶

On June 14, 1995, the Senate passed the Telecommunications Act of 1996, a part of which was Title V or the CDA, by a vote of eighty four to sixteen.¹⁷ It was then signed into law by President Clinton on February 8, 1996.¹⁸ Section 223(a)(1) of the CDA imposes liability upon

(a) [w]hoever—

(1) in interstate or foreign communications—

(A) by means of a telecommunications device knowingly—

- (i) makes, creates, or solicits, and
- (ii) initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly—

- (i) makes, creates, or solicits, and
- (ii) initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communications . . .

shall be fined under title 18, United States Code, or imprisoned not more than two years, or both.¹⁹

Section 223(d)(1)(B), on the other hand, prohibits “display[ing]

15. *Id.*

16. Cannon, *supra* note 13, at 68-70.

17. 141 CONG. REC. S8346-47 (daily ed. June 14, 1995).

18. *ACLU v. Reno*, 929 F. Supp. 824, 827 (E.D. Pa. 1996) [hereinafter *Reno I*].

19. 47 U.S.C.S. § 223 (Law. Co-op. 2000) (repealed 1996).

in a manner available to a person under eighteen years of age, any comment, request, suggestion, proposal, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards.”²⁰

On the same day that the Telecommunications Act of 1996 was signed into law, twenty plaintiffs filed a lawsuit against the Attorney General and the Department of Justice challenging the constitutionality of the CDA, particularly sections 223(a)(1) and 223(d).²¹ The plaintiffs argued that sections 223(a) and 223(d) were too vague and violated both the First and Fifth Amendments.²² A temporary restraining order against the two provisions of the CDA was granted on the basis that “‘the indecency provision’ in the CDA was unconstitutionally vague.”²³

Following the order, twenty-seven plaintiffs filed a second lawsuit and the court consolidated the two lawsuits.²⁴ Despite the government’s defenses, which included the CDA allowance for “safe harbor” defenses in Section 223(e) for those accused of violation,²⁵ a preliminary injunction was entered against enforcement of the CDA.²⁶

20. *Id.*

21. *Reno I*, 929 F. Supp. at 827.

22. *Id.*

23. *Id.*

24. *Id.* at 827-28.

25. *Id.* at 829-30.

26. *Id.* at 849. In the court’s finding of facts, it discussed the availability of at-home censorship software and the software’s success in restricting a child’s access to offensive material. *Id.* at 839-42. Senator Leahy issued a press release regarding the court’s decision stating:

[T]he court in Philadelphia made the right decision. It had the benefit of a primer on how the Internet works. Most members of Congress who voted in favor of this law look at a computer terminal and think it is a TV set on the fritz. A unanimous court made clear that we do not forfeit our First Amendment rights when we go on-line.

Let no one be confused. This is not a victory for child pornography. This is a victory for the First Amendment and for American technology.

Senator Patrick Leahy, *Statement on the Three-Judge Panel Decision Declaring the Communications Decency Act Unconstitutional* (June 12, 1996), at <http://www.senate.gov/~leahy/press/199606/960612.html> (last visited Mar. 17, 2001). Senator Exon stated:

[T]he court has taken the ACLU line that anything goes on the Internet, even though that overlooks well-established laws protecting children from pornography in other areas. The Decency Act stands for the premise that it is wrong to provide pornography to children on computers just as it is wrong to do it on a street corner or anywhere else. Hopefully, reason and common

The CDA eventually reached the Supreme Court and was declared unconstitutional on June 26, 1997,²⁷ as the Internet world breathed a collective sigh of relief, narrowly escaping restriction. The government, in arguing for the reversal of the district court's decision, claimed that the CDA was "plainly constitutional"²⁸ under *Ginsberg v. New York*,²⁹ *FCC v. Pacifica Foundation*,³⁰ and *Renton v. Playtime Theatres, Inc.*³¹ The Supreme Court's reply to this argument was that instead of quashing the constitutional problems, these cases actually raised doubts about the constitutionality of the CDA.³² Focusing on the vagueness of the CDA, the Court stated that the Act "suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. This burden is unacceptable if there are less restrictive alternatives that would be at least as effective."³³ The Court then entered its ruling that

as a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that government regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefits of censorship.³⁴

sense will prevail in the Supreme Court.

Citizens Internet Empowerment Coalition, *Exon Issues Statement on Court Ruling on Decency Act*, at http://www.ciec.org/decision_PA/960612_Exon_prs.html (last visited Mar. 17, 2001).

27. *Reno v. ACLU*, 521 U.S. 844, 855 (1997).

28. *Id.* at 864.

29. *Ginsberg v. New York*, 390 U.S. 629, 639-40 (1968). The Court claimed that *Ginsberg* was narrower than the CDA in four respects: the CDA would apply even without a parent's participation or consent; the CDA was not limited to commercial transactions; the CDA does not define the word "indecent" as used in section 223(a)(1) and does not require under section 223(d) that the material "lack serious literary, artistic, political, or scientific value; and the CDA applies to children under the age of 18 instead of 17 as in the New York statute." *Reno*, 521 U.S. at 865-66.

30. *FCC v. Pacifica Found.*, 438 U.S. 726, 749-50 (1978). *Pacifica* is distinguished from the CDA in three ways: the CDA is not limited to particular times and is not evaluated by an agency familiar with the internet; the CDA is punitive; and the internet does not have a history of having limited First Amendment protection. *See Reno*, 521 U.S. at 867.

31. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 49 (1986). The Court distinguished the CDA from *Renton* because it is "a content-based blanket restriction on free speech, and, as such, cannot be 'properly analyzed as a form of time, place, and manner regulation.'" *Reno*, 521 U.S. at 868.

32. *Reno*, 521 U.S. at 864.

33. *Id.* at 874.

34. *Id.* at 885. Justice O'Connor and Chief Justice Rehnquist concurred with the

B. The Child Online Protection Act

In April 1998, Representative Mike Oxley (R-Ohio) introduced the Child Online Protection Act (COPA or CDA II)³⁵ which rode on the coattails of the CDA and Kenneth Starr's Internet-posted Independent Counsel Report on President Clinton and Monica Lewinsky.³⁶ The COPA was signed into law by President Clinton on October 21, 1998 as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.³⁷ Title 47 U.S.C. § 231(a) provides:

- (1) Prohibited conduct. Whoever knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined

majority ruling that portions of the CDA are unconstitutional but dissented on the point that the creation of "adult zones" on the Internet can be constitutionally sound. *Id.* at 886-87. Following the Supreme Court decision, President Clinton stated:

[I]n the coming days, I will convene industry leaders and groups representing teachers, parents and librarians. We can and must develop a solution for the Internet that is as powerful for the computer as the v-chip will be for the television, and that protects children in ways that are consistent with America's free speech values. With the right technology and rating systems – we can help ensure that our children don't end up in the red light districts of cyberspace.

The White House, *Statement by the President* (June 26, 1997), available at <http://clinton.C-3.hara.gov/WH/New/html/19970626-7158.html> (last visited Jan. 14, 2001). Senator Leahy stated:

The Supreme Court has made clear that we do not forfeit our First Amendment rights when we go on-line. This decision is a landmark in the history of the Internet and a firm foundation for its future growth The Communications Decency Act was misguided and unworkable. It reflected a fundamental misunderstanding of the nature of the Internet, and it would have unwisely offered the world a model of online censorship instead of a model of online freedom Mixing government and politics with free speech issues often produces a corrosive concoction that erodes our constitutional freedoms. Congress should not be spooked by new technology into tampering with our old Constitution. Even well-intended laws for the protection of children deserve close examination to ensure that we are not stepping over constitutional lines.

Senator Patrick Leahy, *Reaction to the U.S. Supreme Court's Decision on CDA and the Internet* (June 26, 1997), available at <http://www.senate.gov/~leahy/press/199706/970626.html> (last visited Mar. 17, 2001).

35. H.R. 3783, 105th Cong. 1 (1998) (enacted).

36. Joel Sanders, *The Regulation of Indecent Material Accessible to Children on the Internet: Is it Really Alright to Yell Fire in a Crowded Chat Room?*, 39 CATH. LAW. 125, 137 (1999).

37. *Id.*; see also 47 U.S.C. § 231 (1999).

not more than \$50,000, imprisoned not more than 6 months, or both.

- (2) Intentional violations. In addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.
- (3) Civil penalty. In addition to the penalties under paragraphs (1) and (2), whoever violates paragraph (1) shall be subject to a civil penalty of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.³⁸

The COPA also provides affirmative defenses for website owners, allowing them to potentially avoid prosecution under the COPA.³⁹ The defenses include restricting access to harmful material by minors “(A) by requiring use of a credit card, debit account, adult access code, adult personal identification number; or (B) accepting a digital certificate verifying age, or by any other reasonable measures that are feasible under available technology.”⁴⁰ However, these affirmative defenses may not be economically or technologically available to “commercial” websites and may result in the unnecessary prosecution of website owners.⁴¹ Although the COPA seems similar to the CDA, sponsors of the COPA have argued that it is indeed different from its predecessor.⁴²

Although it is narrower in scope than the CDA, constitutional problems still remain with the COPA.⁴³ The COPA targets “communication for commercial purposes” that is deemed “harmful to minors”⁴⁴ instead of the “obscene and indecent” materials targeted by the CDA.⁴⁵ The COPA’s definition, like the CDA’s, thus appears to be vague and hard to define.⁴⁶ Problems may arise in the adoption of such vague standards in the realm of the Internet because of the

38. 47 U.S.C. § 231(a).

39. *Id.* § 231(c).

40. *Id.* § 231(c)(1)(A)-(B).

41. Miller, *supra* note 3, at 168.

42. *Id.*

43. *Id.* at 166, 168.

44. 47 U.S.C. § 231.

45. 47 U.S.C.S. § 223.

46. Miller, *supra* note 3, at 168.

difficulty in separating adults, minors, and even the younger minors from the older minors in cyberspace.⁴⁷ Moreover, website owners may risk losing visitors because of the COPA's mandatory age verification procedures. Visitors to the information highway, required to enter personal information before being allowed access to a website, may just decide to abandon the journey altogether to protect their privacy and security.⁴⁸

On October 22, 1998, the ACLU and sixteen other plaintiffs filed a lawsuit, claiming that the COPA was unconstitutional under the First Amendment because it infringed on adults' and older minors' free speech rights, and under the Fifth Amendment due to the COPA's vagueness.⁴⁹ The district court ruled on November 20, 1998, that the COPA did violate the First Amendment and granted a temporary injunction, protecting all Internet users, until its extended expiration date on February 1, 1999.⁵⁰ The plaintiffs then brought a successful motion for preliminary injunction, enjoining the Attorney General "from enforcing or prosecuting matters premised upon 47 U.S.C. § 231 of the Child Online Protection Act at any time for any conduct that occurs while this Order is in effect."⁵¹

On September 1, 1999, the Center for Democracy and Technology together with publishers, civil liberties groups, trade associations, and industry members filed an amicus brief attacking the COPA.⁵² The brief stated that

[f]or the second time in three years, the Congress has enacted legislation which threatens to turn what the United States Supreme Court has recognized to be a "dynamic, multifaceted category of communication" . . . into a child-proof medium whose "level of discourse" would be reduced to that "suitable for a sandbox." This the First Amendment to the Constitution does not allow.⁵³

The brief argued that the COPA is still unconstitutional because it focuses on a broad category of speech that is constitutionally protected for adults; makes it a crime to post such material unless the

47. *Id.*

48. *Id.*

49. *ACLU v. Reno*, 31 F. Supp. 2d 473, 476-77 (E.D. Pa. 1999).

50. *Id.* at 477.

51. *Id.* at 498.

52. Brief of Amici Curiae Center for Democracy and Technology, et al., *ACLU v. Reno*, 217 F.3d 162 (3d Cir. 2000), available at <http://www.Cdt.org/speech/copa/99090/amicus.html> (last visited Mar. 17, 2001).

53. *Id.*

website succumbs to the rating system and rates itself as inaccessible to minors; discourages controversial but constitutionally protected material by imposing the burden of requiring those who wish to access the information to enter private information such as credit card numbers and age verification; and disregards the preference for the free and nonrestrictive use of new technology over government regulation.⁵⁴

Reno II was appealed on November 4, 1999 and the district court's grant of a preliminary injunction against the COPA was affirmed.⁵⁵ The Court of Appeals for the Third Circuit stated its concern with the COPA's use of "contemporary community standards" in defining what is harmful material to minors:⁵⁶

The overbreadth of COPA's definition of "harmful to minors" applying a "contemporary community standards" clause—although virtually ignored by the parties and the amicus in their respective briefs but raised by us at oral argument—so concerns us that we are persuaded that this aspect of COPA, without reference to its other provisions, must lead inexorably to a holding of a likelihood of unconstitutionality of the entire COPA statute.⁵⁷

Thus, the COPA also failed where the CDA failed. Both were unable to reconcile the need for a protective system for children using the Internet and the protection of the constitutional right of free speech.

III. The Internet Content Rating Association

A. *The International Solution?*

In April 1999, the Internet Content Rating Association (ICRA) was formed as an independent, non-profit organization.⁵⁸ A U.S. organization, the Recreational Software Advisory Council (RSAC), was where the Recreational Software Advisory Council for the Internet rating and filtering system (RSACi) first originated.⁵⁹ RSAC

54. *Id.*

55. *ACLU v. Reno*, 31 F. Supp. 2d 473, 498 (E.D. Pa. 1999), *aff'd*, 217 F.3d 162 (3d Cir. 2000).

56. *ACLU*, 217 F.3d at 173.

57. *Id.* at 173-74.

58. Internet Content Rating Association, *History of RSAC/ICRA*, at http://www.icra.org/icra_main.htm (last visited Mar. 17, 2001).

59. *Id.* RSACi is a filtering and rating system that can be found in Microsoft's Internet Explorer and Netscape's Navigator, which informs users about the level of

was incorporated into the ICRA which now manages and operates the RSACi rating system.⁶⁰ The fact that ICRA originated from a U.S. organization indicates the strength of the American influence in finding a potential international answer to the Internet rating system problem. According to ICRA Executive Director Stephen Balkam, "with RSACi, it was an American response to an American situation – which was the 1996 threat, and realization of the [US Net content law] CDA. Everyone on the board was American."⁶¹

ICRA was formed by large companies from the internet industry in an attempt to beat the government to regulation of the Internet.⁶² Jens Waltermann, then an ICRA chairman, said that "the system is designed to pre-empt government legislation within the European Union and the United States to impose 'upstream filtering' on the web."⁶³ Members of ICRA include: AOL Europe; Bell Canada; British Telecom; the Bertelsmann Foundation (AOL'S European partner); Cable & Wireless; Electric Network Consortium, Japan; IBM; the Internet Watch Foundation; Microsoft Corp.; and UUNet.⁶⁴ Each of these big industry players paid a hefty price for the chance that its self-regulatory program would be successful in avoiding government regulation of its profitable operations. One seat on the ICRA board came at a reported cost of \$25,000 per year, for up to a maximum of four seats per member.⁶⁵

Global Business Dialog on Electronic Commerce, a European

sexual and violent content of a particular website.

60. *Id.*

61. Chris Oakes, *Internet Ratings Redux*, at <http://wired.com/news/news/politics/story/21652.html> (last visited Nov. 21, 1999).

62. Robert MacMillan, *Munich Conference Worries Privacy Advocates – Correction*, NEWSBYTES (Sept. 6, 1999), at <http://www.newsbytes.com>.

63. *Who's to Patrol the Web?*, INTELLIGENCE NEWSLETTER (Oct. 7, 1999), at <http://www.intelligenceonline.comp/ps/AN/Arch/INT/INT.367.asp> (last visited Mar. 17, 2001).

64. Internet Content Rating Association, *ICRA Board Members*, at http://www.icra.org/_en/en_about.html (last visited Mar. 17, 2001). The ICRA's board was most recently joined by Ondigital, a leading digital television broadcaster that allows internet users to surf the web using their television. Internet Content Rating Association, *Ondigital Becomes First Broadcaster to Join the Internet Content Rating Association*, at <http://www.icra.org/press/p9.html> (last visited Oct. 10, 2000). ICRA Executive Director Stephen Balkam says: "Ondigital represents the first organization to join ICRA that crosses converging technological mediums. We are very excited at the prospect of their involvement with ICRA and welcome them onto the board." *Id.*

65. Internet Content Rating Association, *An Invitation to Membership*, at <http://www.icra.org/membership.htm> (last visited Nov. 21, 1999).

group comprised of 200 of the world's most influential high-tech and media companies, stated that:

Business is very motivated to continue to develop market-based solutions to protect minors from harmful content on the Internet, not only because of important public policy interests at stake, but also because such solutions help generate consumer confidence and are ultimately good for business.⁶⁶

Thus, when consumers are the driving force behind a company's decision to adopt a voluntary code of conduct, it looks like the decision-makers are more concerned with the bottom line.

Like voluntary codes of conduct for human rights considerations in producing goods, the main idea is that negative publicity may have an adverse effect on the bottom line if consumers choose one company that complies with the voluntary code of conduct over another company that does not.⁶⁷ The ICRA website states that "these companies and organizations [that are members of ICRA] are demonstrating to their users and to governments around the world, that they take their corporate responsibility seriously and are willing to actively participate in an exemplary model of self-regulation."⁶⁸ Therefore, as long as becoming part of a voluntary code of conduct does not greatly hurt their profits, the decision-makers of large companies will take other factors, besides profits, into consideration.

Plans from ICRA as well as Internet Content Rating for Europe (INCORE) were presented to 300 Internet industry executives, government officials, legal academics, and consumer advocates at the Internet Content Summit in Munich in 1999.⁶⁹ Members were voted onto an advisory board to make recommendations to ICRA for

66. Courtney Macavinta, *Global Net Ratings Committee Emerges from Munich Summit*, at <http://news.cnet.com/news/0-1006-200-118800.html> (Sept. 14, 1999).

67. Debora L. Spar, *The Spotlight and the Bottom Line: How Multinationals Export Human Rights*, 77 FOREIGN AFF. 2, 10 (1998).

The logic follows a pattern that one might call the spotlight phenomenon. When U.S. corporations go abroad, they take more than their capital and technology with them. They also take their brand names, their reputations, and their international images. They bring in their wake the scrutiny of U.S.-based activist groups and the international media. When U.S. corporations are caught engaging in unfair or abusive practices, these groups spring into action, casting a shadow of scorn.

Id. at 8. "Once firms have adhered to publicly acknowledged standards, they magnify the effect of their own violations Once they have agreed to comply, they will be forced to – not by the sanction of law but by the sanction of the market." *Id.* at 9.

68. Internet Content Rating Association, *supra* note 65.

69. Macavinta, *supra* note 66.

content control tools.⁷⁰ The basic motivation behind the plans was to encourage website owners and publishers on an international scale to voluntarily rate their sites so that whatever is deemed undesirable by the website visitor can be blocked.⁷¹ Stephen Balkam, Executive Director of ICRA, stated that the goal is not to have all the websites in the world comply with the voluntary plan.⁷² Instead, "getting key sites and the most heavily trafficked sites to participate can help to establish critical mass."⁷³ The focus will primarily be on websites which fall into three categories: sites geared towards children, sites not geared towards children, such as pornographic sites, and the top 100 visited sites.⁷⁴

One of the main proposals was developed by the Bertelsmann Foundation and drafted by Jack Balkin, a Yale Law School professor, together with the ACLU, former White House advisor Ira Magaziner, and international law enforcement and government officials.⁷⁵ The plan presented to ICRA, like other Internet regulation schemes, sought to create a balance between protecting children from questionable content and free speech rights.⁷⁶ To do this, the plan recommended that 1) hotlines be established so that Internet users and others can report websites with questionable content; 2) website owners and publishers establish their own codes of conduct; 3) Internet service providers (ISPs) remove websites that contain questionable content; and 4) website operators, partners, and subsidiaries voluntarily label their sites, with patrons voluntarily filtering websites at home.⁷⁷ The last of these suggestions would be implemented by encouraging websites to disclose the kinds of controversial material found on their sites and having parents and other website visitors determine for themselves what material to access through their computers.⁷⁸

The RSACi system will be the central administrator of this voluntary system for rating and filtering website material. More than

70. *Id.*

71. *Id.*

72. Oakes, *supra* note 61.

73. *Id.*

74. *Id.*

75. Courtney Macavinta, *AOL, Others Plan Global Net Content Rating System*, at <http://news.cnet.com/news/0-1005-200-346750.html> (Sept. 2, 1999).

76. *Id.*

77. *Id.*

78. *Id.*

120,000 sites worldwide have already rated themselves with RSACi and RSACi is already available to parents and other Internet users through Microsoft's Internet Explorer and Netscape's Navigator.⁷⁹ This, claims the ICRA, "allows consumers with different cultural and individual standards to apply their own subjective judgments through their browser settings."⁸⁰ Moreover, the RSACi system has been translated into most languages, making it easier for ICRA to accomplish its purpose of patrolling the Internet on an international scale.⁸¹

In December 2000, the ICRA launched its "new self-rating platform"⁸² which basically consists of two parts. The first is the labeling of websites based on web authors' answers to a questionnaire⁸³ describing the contents of their websites and ICRA generating a Content Label which conforms to an Internet industry standard known as the Platform for Internet Content Selection (PICS).⁸⁴ The second part is the filtering of content by Internet users on their own personal Internet browsers "based on the *objective information* declared in the label and *subjective preferences* of the user."⁸⁵ Categories covered under this rating and filtering system are "chat, the language used on the site, the nudity and sexual content of a site, the violence depicted on the site, [and] gambling, drugs, and alcohol."⁸⁶

One general concern is how a standardized system such as RSACi will be able to address the cultural tastes of people worldwide and to set the rating and filter system according to the level of content

79. Internet Content Rating Association, *supra* note 65. See also Internet Content Rating Association, ICRA (RSAC) Timeline, at <http://www.icra.org/about.html>. (last visited Mar. 17, 2001).

80. *Id.*

81. *Id.*

82. *Id.*

83. Internet Content Rating Association, *View Before You Label with ICRA*, at http://www.icra.org/_en/en_view.html (last visited Mar. 17, 2001). The questionnaire is made up of descriptors that web authors will check to describe the contents of their website and the context in which these things appear. Examples are: "blood and gore, human beings; killing of fantasy characters (including animation); passionate kissing; explicit sexual language; promotion of drug use . . . and whether the material appears in artistic, educational or medical contexts that are suitable for children [or] appears in a context intended to be medical and is unsuitable for young children" *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

that is acceptable for a particular culture.⁸⁷ Both Balkin and Balkam realize that this would be impossible and that “it’s a leaky system . . . [b]ut it’s the best you can do.”⁸⁸ Balkam envisions a system that is simply “good enough,” to “give consumers the advice and tools which they can [use to] choose” the material that they want to view.⁸⁹ In the future, this system would most likely be categorized into different cultural filtering templates from which Internet users can choose the filter that best suits their tastes.⁹⁰ “One template might represent the views of the Catholic Church, while another might convey the thoughts of the National Abortion Rights Action League.”⁹¹ This template system is predicted to grow until templates are eventually created by organizations and companies, such as the local library, and then downloaded to an Internet user’s computer.⁹²

However, the possibility of offensive content slipping by ICRA’s labeling and filtering system is still very real. Consider the aforementioned fact that by just making a simple typographical error like yahhoo.com instead of yahoo.com, an unwary Internet user can be led to an undesired site.⁹³ A congressional aide, for example, once went to whitehouse.com instead of whitehouse.gov and was led to “a digitally enhanced caricature of Hillary Rodham Clinton – resplendent in black leather and whip – leading the president by a dog leash, and a banner cooing, ‘our nation’s young teens, hot lesbians and hard-core nymphomaniacs all gather here to serve you and serve their country.’”⁹⁴ Like these recent domain name problems, the rating and blocking system suggested by ICRA may encourage owners or publishers of adult websites, or websites with other controversial material, to mislabel their sites or to include fairly innocuous terms in their website descriptors or metatags. This underhanded tactic may lead a child who is conducting a search for a homework assignment to sites that his or her parents were trying to block in the first place – with or without RSACi.

87. Matthew Yeomans, *The World’s Wide Web: The Rating Game*, at <http://www.thestandard.com/article/display/0,1151,6705,00.html> (last visited Mar. 17, 2001).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. See Swartz, *supra* note 7.

94. *Id.*

To prevent this from happening, critics claim that it is likely that governments would make deliberate mislabeling a crime.⁹⁵ "In this way, a voluntary web ratings system could easily be transformed, with the best intentions, into a tool for censorship. Being forced to label your speech is nearly as onerous as having it restricted."⁹⁶

Not surprisingly, the rating and filtering system is causing a stir among free speech advocates. David Sobel, general counsel to the Electronic Privacy Information Center, has stated that "there is real danger that the establishment of these systems could, in fact, facilitate government censorship, because once a rating system and the accompanying blocking technology is widely deployed, there will be a strong incentive to require the use of that system."⁹⁷ Esther Dyson, a chairperson of Edventure Holdings and one of Bertelsmann Foundation's experts, has stated that "the challenge with self-regulation is that all of these organizations don't end up as cops for the government."⁹⁸ Balkam had only this to say in response: "[W]e have made a particularly strong effort to involve the civil libertarians in this debate."⁹⁹

The ACLU and the Global Internet Liberty Campaign has stated that a "so-called voluntary ratings system may actually facilitate governmental restrictions on Internet expression."¹⁰⁰ Executive Director Balkam responded by stating, "I think there have been some within certain organizations who have always viewed this as a potential threat for government censorship. Yes . . . governments can do all kinds of things to their people, but we should remain vigilant in everything from ratings systems to the electric chair."¹⁰¹

This leads to the conclusion that only mainstream content put on the Internet by large media companies, most likely those companies that have become contributing members of ICRA, will be easily accessible to Internet users.¹⁰² This may be another case of the big corporation gaining an advantage over the small entrepreneur.

95. See Joe Salkowski, *Rating System for Web Would Deserve an X*, CHI. TRIB., Dec. 19, 2000, at 8.

96. *Id.*

97. Macavinta, *supra* note 75.

98. *Id.*

99. *Id.*

100. David McGuire & Robert MacMillan, *ACLU Blasts Online Ratings Conference - Update*, NEWSBYTES (Sept. 9, 1999), at <http://www.newsbytes.com>.

101. *Id.*

102. See Oakes, *supra* note 61.

Controversial sites or sites that do not participate in the rating system will be pushed out by big Internet service providers that support ICRA.¹⁰³ As Sobel has stated, “[t]he proposal is as much about making the Internet safe for large media companies as it is about making the Internet safe for children.”¹⁰⁴

B. Other Problems?

Although ICRA may fail because of problems with reconciling the interest in protecting children from particular content and the interest in free speech, as encountered by other legislation attempting to address this issue, other foreseeable problems may arise and result in ICRA’s downfall. Without the government backing that the CDA and the COPA would have had, ICRA is certain to face problems such as a lack of individual and parent involvement, enforcement of a self-regulatory rating system, and previous failures of similar voluntary rating systems. These may cause the downfall of yet another proposed solution to the problem of protecting children from obscene and questionable material.

Balkam claims that “momentum is what it’s all about in the self-regulatory world. Parents have not been demanding it enough, despite surveys showing them to be concerned about access to harmful material for their kids.”¹⁰⁵ Sobel adds that “it’s hard for people to say this, but this really comes down to a matter of parents being involved. To popularize the idea that all you need to do is spend \$30 and buy the software program . . . is irresponsible.”¹⁰⁶ While the RSACi system already exists on Microsoft’s Internet Explorer and Netscape’s Navigator, most parents still do not know that it exists.¹⁰⁷ If parents continue to procrastinate in protecting their children’s online activities, there is nothing that ICRA will be able to do since it is a voluntary program. ICRA requires parents to make the first move to find out about the rating systems and set their browsers accordingly. To knock on every family’s door and install the

103. Websites that do not volunteer for the ICRA labeling system “including independent news sites, artists, fringe political groups and others whose speech is poorly served by standard labels – would be invisible to the increasing number of web surfers whose browsers were set to block unrated pages.” Salkowski, *supra* note 95.

104. John Schwartz, *Plan for Self-Rating of Websites Assailed*, NEWSBYTES (Sept. 14, 1999), at <http://www.newsbytes.com>.

105. Oakes, *supra* note 61.

106. MacMillan, *supra* note 62.

107. See Internet Content Rating Association, *supra* note 58.

program for them would parallel government regulation, precisely the kind of intrusion ICRA is attempting to avoid.

Moreover, more children than parents know how to use the Internet. A recent survey from Arbitron NewMedia revealed that 62 percent of children aged 8-15 use the Internet as opposed to only 39 percent of those aged 16-74.¹⁰⁸ Although a majority of adults said that they were "extremely concerned" about children accessing the Internet and believed that more adult supervision is needed, many adults do not have the knowledge or the time to provide the necessary supervision.¹⁰⁹ "Most children realize that their parents and teachers lack Web knowledge. Therefore, children cease seeking Web information from adults, giving parents fewer opportunities to instruct and intervene in their kids' media use."¹¹⁰ Moreover, "prime-time Web usage" for children is usually after school, when parents are unlikely to be home to supervise their children.¹¹¹ This may explain why many parents do not know that rating systems such as RSACi exist on their computers at home and do not voluntarily set their browsers as ICRA suggests.

Others believe that the problem does not lie merely with the lack of parental involvement. Instead, the problem is the subjective standard that is used in choosing what a child is allowed to see online. Marc Rotenberg, executive director of the Electronic Privacy Information Center, has stated "it's an intractable problem . . . it can't really be solved because how people evaluate information is highly subjective . . . it's highly contextualized and it's very different to reduce a string of characters into what one person might find acceptable."¹¹² Thus, a family protecting their child from online pornography by using the RSACi system will not be able to easily differentiate pornography from the daily news or educational sites, if the words describing the sites are the same. Even with ICRA's attempt to include context in its labeling questionnaire, the categories are still subject to interpretation and can never be wholly objective.

In addition to this problem, the filtering and rating systems themselves may contain biases that will be reflected in the sites that

108. Bob Woods, *Most 8 to 15 Year-Olds Now Using the Web*, NEWSBYTES (July 20, 1999), at <http://www.newsbytes.com>.

109. *Id.*

110. *Id.*, quoting Dr. Roberta McConochie, director of research at Arbitron NewMedia.

111. *Id.*

112. Oakes, *supra* note 61.

can or cannot be accessible. Recently, the Internet Watch Foundation reported that

[W]hen we attempted to look at UK sites, we found the filters blocked some containing useful or education material. Another concern is that software manufacturers block views they dislike – Cybersitter (an online filtration system), for instance, denied access to a Massachusetts Institute of Technology site about internet filtering which criticises Cybersitter.¹¹³

One too many lines has to be drawn, and critics believe this to be a major flaw of ICRA.

Past failures of similar plans have made critics wary of ICRA's plans. In Australia, the Broadcasting Services Amendment (Online Services) Bill was passed in June 1999.¹¹⁴ The bill restricted adults from accessing material deemed to be "unsuitable for minors" according to existing standards set by the Australian film and video industry.¹¹⁵ As with the CDA, the COPA and ICRA's labeling and filtering system, this bill caused a great stir among free speech groups. Electronic Frontier Australia viewed the bill as mere privatized censorship.¹¹⁶ Ramin Marzbani, CEO of www.consult.com, "a leading Australian Internet consulting company," stated that "everyone is pretty embarrassed about the legislation . . . [w]e haven't solved the question of the Internet tax yet, how are we going to solve something more complicated like Internet content?"¹¹⁷ A comparison made between Australia's legislation and ICRA's system gives critics a reason to squirm in their seats. ICRA only differs from Australia's legislation by putting censorship powers into the hands of established Internet service providers who double as paying members of the ICRA's board instead of the film and video industry.

The biggest problem may, however, still be lurking in the shadows. How is a self-regulatory system going to be enforced? At least with the CDA or the COPA, there would be government backing and real legal consequences for non-compliance. The ICRA plan, on the other hand, lacks such backing and those who simply do

113. Consumers' Association, *Through the Net, WHICH?*, available at www.iwf.org.uk/safe/which/total.htm (last visited Mar. 17, 2001). See also Anna Soderblom, *Cyber-savvy Means Safe*, THE TIMES (LONDON), Nov. 13, 2000.

114. Yeomans, *supra* note 87. See also Broadcasting Services Amendment (Online Services Bill), 1999 (Austl.).

115. See Yeomans, *supra* note 87.

116. *Id.*

117. *Id.*

not wish to participate in the rating system can choose to do so. Thus, there really is no enforcement of ICRA's plan. However, it is hoped that the ICRA plan of self-regulation may be enforcement in and of itself. Mark Wossner, chairman of the Bertelsmann Foundation, has stated that "it is in the best interest of [the] industry to commit to self-regulatory mechanisms. The Internet is the medium of free expression and has to remain just that, even if safeguards for your protection against illegal content need to be provided."¹¹⁸

C. Implications of an International Solution

After the tragic murder spree at Columbine High School in Littleton, Colorado, where the two teenage gunmen allegedly learned how to make their bombs online, and other school shootings, a new government interest was sparked in monitoring of the Internet.¹¹⁹ Former Vice President Al Gore enlisted the help of Internet industry executives to come up with ideas for an Internet rating system.¹²⁰ Senator John McCain, along with Senator Kent Conrad, suggested other types of content controls for a range of media.¹²¹ Then President Clinton also joined the bandwagon and called on the entertainment industry to come to a consensus on a standard code of conduct for its content.¹²²

D. The Fine Line of What is to Be Accessible

The possibility of government intervention and control of controversial sites with the use of the ICRA rating system is a very real problem for large, established companies in the industry. The ICRA plan could easily result in what Dyson describes as a "worldwide bureaucracy always forced to take the safe route, calling for the removal of questionable content."¹²³ This may result in denying children access to books that have now become an important part of U.S. literary history such as *Uncle Tom's Cabin* or *Catcher in the Rye*. In addition to books, future technologies and new ideas may be sacrificed. The gnawing question is whether we want to instill closed-minded morals on a broader level, internationally, and

118. Schwartz, *supra* note 104.

119. MacMillan, *supra* note 62.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

whether this is the price we want to pay for the safer route.

Countries that do not have the protections of the First Amendment are free to use the rating system to try and block categories of online speech. Germany, Bertelsmann's homeland, could effectively block and even justify its censorship of Hitler's biography *Mein Kampf* and other historic, but controversial, material under the guise of ICRA's rating system.¹²⁴ This then begs the question of whether foreign laws will be violated through the Internet.¹²⁵ Like Amazon.com's recent run-in with the German government by selling *Mein Kampf* through the internet to German citizens, the German government, in enforcing German law and censoring the Internet through the ICRA rating system, would be able to justifiably control what is accessible to their Internet users.¹²⁶ This would mean blocking controversial material even if the material originated in the U.S. and thus has the protection of the First Amendment.¹²⁷ Other countries may be able to prevent their citizens from accessing websites that contain nudity or other similar material, thereby also blocking Boticelli's "Birth of Venus" and other material valued as art.¹²⁸

The Canadian Supreme Court ruled in 1992 that police action was warranted where there was any representation of "degradation."¹²⁹ This essentially gave police the power to draw the line between "freedom and constraint" and between "expression and degradation" and resulted in the seizure of books such as Andrea Dworkin's *Pornography*, David Leavitt's *A Place I've Never Been*, and Marguerite Duras's *The Man Sitting in the Corridor*.¹³⁰ Moreover, Canada's 1993 child pornography legislation, C-128, led police to shut down an art gallery and seize paintings by Eli Langer depicting child abuse and "mostly children who appear afraid of adults, playing with each other sexually, or peeing happily."¹³¹ According to Langer, "[w]hat's incredible about this, is that it occurred over imagined

124. Bruce E. H. Johnson, *Regulatory Update: Internet Sheriffs Approach the Electronic Frontier*, 584 PLI/Pat 103, 106 (1999).

125. *Id.*

126. *Id.*

127. *Id.*

128. Salkowski, *supra* note 95.

129. R. v. Butler, [1992] S.C.R. 452; Zachary Margulis, *Canada's Thought Police*, at http://www.wired.com/wired/archive/3.03/canada_pr.html (last visited Mar. 17, 2001).

130. Margulis, *supra* note 129.

131. *Id.*

images. They had the power as though they were real events."¹³²

Other countries block access to the Internet, not so much to censor art, nudity, or pornography, but to block questionable political messages that are perceived to threaten the government's existence. Vietnam's adaptation to the Internet has been slow, but newspapers and magazines in 1997 boasted of how the Internet would change the country in the new millennium.¹³³ One observer noted that "two years ago they said last year, last year they said this year. The fact is no one really knows."¹³⁴ A manager at an aspiring Vietnamese Internet service provider stated that "the government is worried about security."¹³⁵ According to a European executive working in Vietnam, "[T]he government is really scared about dissident information from overseas."¹³⁶ The police have the authority to check everything and will hold anyone involved in making the Internet accessible, responsible. "If the rules are violated by a user, the service provider's license for operation can be suspended and their equipment confiscated."¹³⁷ The Vietnamese government is in a state of paranoia, monitoring the phones, e-mail, and faxes of suspect citizens.¹³⁸ Overseas publications are delivered with "spray paint and black marker obscuring fashion model cleavage and news about the government."¹³⁹ Luggage is examined with x-rays, and books and CDs must be left at customs for "cultural checking" and are sometimes destroyed.¹⁴⁰

In 1994, the National Science Foundation in Washington, D.C., removed a ban on Cuban Internet traffic because legislators like Senator Robert Toricelli believed that information is a way to liberate Cuba.¹⁴¹ In 1995, InterNIC, a U.S.-based cooperative, gave the Cuban government an address in cyberspace which led to Cuban pronouncements that the Internet was a "fundamental right" for the

132. *Id.*

133. See David Case, *Big Brother is Alive and Well in Vietnam – And He Really Hates the Web*, at http://www.wired.com/wired/archive/5.11/es_vietnam_pr.html (last visited Feb. 16, 2000).

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. Patrick Symmes, *Che is Dead*, at http://www.wired.com/wired/archive/6.02/cuba_pr.html (last visited Feb. 16, 2000).

Cuban people.¹⁴²

The Cuban government, however, continued to see a dangerous Internet which includes things like “pornography, electronic attacks designed to crash the national system, and political propaganda (meaning anticommunist propaganda) – the procommunist kind is welcome.”¹⁴³ Raul Rivero, a Cuban writer and journalist, was using his computer and modem to send human rights reports to Miami when he was detained for two hours and his computer and modem seized.¹⁴⁴ Dozens of such seizures occurred in a period of six months in a process termed “registration,” making it appear that the computers would be returned, but the owners never saw them again.¹⁴⁵ Elizardo Sanchez, a leading Cuban human rights dissident, stated that, “they say these machines are illegal, or were used to commit offenses against the government.”¹⁴⁶ Such attitudes were directed towards websites that alluded to anything political. The website of the Centro Nacional de Intercambio Automatizado de Informacion (CENIAI), Cuba’s administrator of the Internet, has a section titled “Politica.”¹⁴⁷ When a user clicks on it, however, the first words to appear on the screen are “political organizations.”¹⁴⁸ Then a link to the “Partido Comunista de Cuba” appears, and finally, a blank screen.¹⁴⁹

Would ICRA be contributing to these countries’ paranoia and give them a tool to justifiably further what is essentially censorship? “Countries are free to pass these sorts of laws already, but they’d be virtually unenforceable. The rating’s infrastructure, though, would make censoring the Net no more than an afternoon’s work.”¹⁵⁰ The ratings system would essentially allow the governments of these countries to block everything that they deem questionable or dangerous to their people and the people would be left with an Internet that is less informative than what they already have.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. Salkowski, *supra* note 95.

E. The Fear of a "Dangerous Wild Animal"—The Internet

Globally, the Internet has grown at a rate many find baffling. With e-commerce at a high and "dot com" advertisements everywhere, consumers and website users are feeling confident about making purchases online and investing in the Internet world. It is not hard to imagine why many authoritarian regimes are reluctant to slow down such growth.¹⁵¹ Malaysia recently stopped regulating the Internet because it did not want to drive away potential foreign investors.¹⁵² "National governments . . . still view the Internet as some exotic and dangerous wild animal. They're mesmerized by its raw bestial power, but are also keen to tame it, lest it turn around and bite them."¹⁵³

Thus, governments and their citizens wonder if they should risk the possibility of coming across controversial material that may be obscene, pornographic, or filled with hatred and vulgar language in exchange for the opportunity of earning future wealth through cyberspace. Or should the safe route be taken by remaining in the dark: unprofitable, but safe?

F. Dim Prospects for Success

Is ICRA just giving parents and other Internet users a false sense of security?

According to Censorware, a free-speech group, N2H2, a U.S.-based company, has installed filtering software in Oklahoma, Tennessee, and Wisconsin public schools that blocked information about Serbia, sex education and that scandal sheet "Mother Jones." At the same time, however, N2H2 allowed access to more than forty hard-core porn sites.¹⁵⁴

Rating systems like the one ICRA proposes probably will not make everything offensive in the world disappear. The rating system will just make sites that contain blocked material a little harder to find and possibly more intriguing.¹⁵⁵ "Just as kids manage to sneak into R-rated movies like 'South Park,' they'll figure out ways to work around the Web ratings."¹⁵⁶ The fact that children probably know

151. Yeomans, *supra* note 87.

152. *Id.*

153. *Id.*

154. *Id.*

155. Salkowski, *supra* note 95.

156. *Id.*

more about getting around the Internet than their parents will make it relatively easy for a child to conduct a full search for material that may, at first blush, be “blocked” from their young eyes.

Thus, parents and other Internet users simply cannot depend on ICRA to tame the Internet for them. Parents especially need to teach their children more about the realities of life on and off the Internet.¹⁵⁷ If the Internet is not the place where children come across questionable material, they will see it in the streets or the schools where the culture is often more sophisticated and mature than parents want to believe. If it is just a matter of putting one’s mind at ease, blocking material on the Internet and creating a road for possible censorship is not the answer.

IV. Conclusion

The CDA, the COPA, and the ICRA plan all have the same goal of protecting children from the horror and shock of reality and the dark world of pornography, racial slurs, vulgar language, and violence. However, all three come up against the same brick wall of censorship, and the reconciliation has yet to be made between protecting children and protecting free speech.

Aside from free speech concerns, the main problem that the CDA, the COPA, and ICRA have to face is the standard by which controversial material will be judged. The subjective tastes of parents, other adults, and the governments of different countries defeat the purpose of having an international rating system. In order for a rating system to be successful, there must be a consensus on what the ratings should include or exclude. If there is no consensus, each country will essentially dictate what material is accessible to other countries. Because the RSACi system originated largely from the United States and has been claimed to be U.S.-centric, ICRA is essentially promoting American values of what is proper Internet material and what children should be able to access freely.

Another concern is that ICRA is run by a board made up of some of the largest Internet industry companies of the world. These companies may be more interested in their profit margins than the welfare of children. They may simply be feeding off of parents’ and governmental insecurities by voluntarily complying with a code of conduct that they created in order to be chosen as the website or

157. *Id.*

Internet service provider that truly cares about children.

Enforcement of voluntary self-regulation will be difficult in comparison to a government-backed and President-signed piece of legislation. The CDA and the COPA, if they had not been found unconstitutional, would have punished noncompliance with fines and jail time. But what are the consequences for noncompliance under ICRA's self-regulatory scheme? The most extreme punishment that may occur is that the website will not self-rate and may be pushed off the face of the Internet world. Or, the website will simply survive and the adults who most likely do not know about the availability of the ICRA ratings will still be able to access the noncompliant websites anyway.

Although ICRA is better than the CDA and the COPA because it is completely voluntary, it still may not work in the end because of its inability to accurately decide a website's value and because involvement from parents and other adults may be lacking. Thus, the information highway may remain untouched for several more years as parents and other adults take responsibility for teaching their children about the realities of the world and warning them to use extra caution as they pass by any "rest stops" along the way.